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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

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DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
MCC TELEPHONY OF THE WEST, LLC FOR  
APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE RESOLD LONG DISTANCE AND  
LOCAL EXCHANGE, FACILITIES-BASED  
LONG DISTANCE AND LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20718A-09-0580

DECISION NO. 71965OPINION AND ORDER**BY THE COMMISSION:**

DATE OF HEARING: September 10, 2010

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

APPEARANCES: Ms. Joan S. Burke, LAW OFFICE OF JOAN S. BURKE, on behalf of Applicant; and

Ms. Ayesha Vohra, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On December 24, 2009, MCC Telephony of the West, LLC ("MCC" or "Company") filed an application with the Arizona Corporation Commission ("Commission") for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold and facilities-based long distance and resold and facilities-based local exchange telecommunications services within the State of Arizona. MCC's application also requests a determination that its proposed services are competitive.

On May 19, 2010, MCC filed an amended application indicating it is seeking a CC&N to provide resold and facilities-based long distance, resold and facilities-based local exchange, and private line telecommunications services within the State of Arizona.

1 On June 25, 2010, the Commission's Utilities Division ("Staff") filed a Staff Report  
2 recommending approval of MCC's application, subject to certain conditions.

3 On June 29, 2010, MCC filed a Request for Expedited Hearing stating that MCC has potential  
4 Arizona customers and that obtaining certification is critical to meeting the needs of those future  
5 customers.

6 On July 7, 2010, by Procedural Order, the hearing in this matter was scheduled for September  
7 10, 2010, and other procedural deadlines were established.

8 On August 6, 2010, MCC docketed a filing showing notice of the application, as amended,  
9 had been published on July 21, 2010, in the *Arizona Republic*, a newspaper of general circulation in  
10 the proposed service area.

11 On August 24, 2010, MCC filed a Request for Expedited Consideration stating that until  
12 MCC is certified that the upcoming migration of Arizona customers cannot be undertaken.

13 On September 10, 2010, a full public hearing was held before a duly authorize Administrative  
14 Law Judge of the Commission at its offices in Phoenix, Arizona. Staff and MCC appeared through  
15 counsel and presented evidence and testimony. No members of the public appeared to give public  
16 comments in this matter. At the conclusion of the hearing, the matter was taken under advisement  
17 pending submission of a Recommended Opinion and Order to the Commission.

18 \* \* \* \* \*

19 Having considered the entire record herein and being fully advised in the premises, the  
20 Commission finds, concludes, and orders that:

### 21 FINDINGS OF FACT

22 1. MCC is a foreign limited liability company, organized under the laws of Delaware, with  
23 its principal place of business in Middletown, New York.<sup>1</sup> MCC is authorized to transact business in  
24 Arizona and is in good standing with the Commission.<sup>2</sup>

25 2. On December 24, 2009, MCC filed an application seeking a CC&N to provide resold and  
26 facilities-based long distance and resold and facilities-based local exchange telecommunications

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28 <sup>1</sup> Application at Attachment A.

<sup>2</sup> Id.

1 services in Arizona. MCC's application also requests a determination that its proposed  
2 telecommunications services are competitive.

3 3. On May 19, 2010, MCC amended its application indicating that it is also seeking  
4 authorization to provide private line telecommunications services in Arizona. MCC also filed  
5 amended tariffs for its proposed services.

6 4. Notice of the amended application was given in accordance with the law.

7 5. Staff recommends approval of MCC's amended application for a CC&N to provide  
8 resold and facilities-based long distance, resold and facilities-based local exchange, and private line  
9 telecommunications services in Arizona and also recommended that MCC's proposed services be  
10 classified as competitive.

11 6. Staff further recommends that:

- 12 a. MCC comply with all Commission Rules, Orders, and other requirements  
13 relevant to the provision of intrastate telecommunications services;
- 14 b. MCC comply with federal laws, federal rules and A.A.C R14-2-1308 (A), to  
15 make number portability available;
- 16 c. MCC abide by the quality of service standards that were approved by the  
17 Commission for Qwest in Docket No. T-01051B-93-0183;
- 18 d. MCC be prohibited from barring access to alternative local exchange service  
19 providers who wish to serve areas where MCC is the only local provider of  
20 local exchange service facilities;
- 21 e. MCC provide all customers with 911 and E911 service, where available, or  
22 will coordinate with ILECs and emergency service providers to provide 911  
23 and E911 service in accordance with A.A.C. R14-2-1201(6)(d) and Federal  
24 Communications Commission 47 CFR Sections 64.3001 and 64.3002;
- 25 f. MCC notify the Commission immediately upon changes to MCC's name,  
26 address or telephone number;
- 27 g. MCC cooperate with Commission investigations including, but not limited to  
28 customer complaints;
- h. The fair value rate base information provided for MCC not be given substantial  
weight in this analysis;
- i. In the event MCC discontinues and/or abandons its service area, MCC must  
provide to both the Commission and its customers notice as set forth in A.A.C.  
R14-2-1107;

- j. MCC offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- k. MCC offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
- l. The Commission authorized MCC to discount its rates and service charges to the marginal cost of providing the services.

7. Staff recommends that the Commission's grant of a CC&N should be considered null and void, after due process, if MCC fails to comply with the following conditions:

- a. Docket conforming tariffs for each of its proposed services within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first. The tariffs submitted to the Commission should coincide with the services described in MCC's amended application.
- b. Procure either a performance bond or an irrevocable sight draft letter of credit ("ISDLC") equal to \$225,000. The minimum bond or ISDLC should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from MCC's customers. The performance bond or ISDLC should be increased in increments of \$112,500. This increase should occur when the total amount of advances, deposits, and/or prepayments is within \$22,500 of the total performance bond or ISDLC amount.
- c. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and 13 copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes earlier. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC on behalf of and for the sole benefit of MCC's customers, if the Commission finds, in its discretion, that MCC is in default of its obligations arising from its CC&N. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect MCC's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from MCC's customers.
- c. As a compliance filing, MCC shall notify the Commission that it has started providing service in Arizona within 30 days of serving its first customer.
- d. If at some time in the future MCC does not collect advances, deposits, and/or prepayments from its customers, MCC should file a request for cancellation of its established performance bond or ISDLC regarding its resold and facilities-based long distance, resold and facilities-based local exchange, and private line telecommunications services. Further, any such request should reference the Decision in this docket and explain MCC's plans for cancelling those portions of the performance bond or ISDLC.

- e. Abide by the Commission adopted rules that address Universal Service in Arizona, which indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service fund. MCC should make the necessary monthly payments required under by A.A.C. R14-2-1204(B).

#### Technical Capability

8. MCC is a wholly-owned subsidiary of MCC Telephony, LLC, which is in turn a wholly owned subsidiary of Mediacom Communications Corporation ("Mediacom").<sup>3</sup>

9. MCC's witness testified that Mediacom is a cable television and broadband communications company providing voice, video, and data services, operating in 23 states with 1.2 million customers nationwide.<sup>4</sup> According to the Staff Report, Mediacom uses Voice over Internet Protocol ("VOIP") technology to provide voice services in conjunction with Sprint Communications Company, L.P. ("Sprint") which is the back office service provider.<sup>5</sup> Mediacom has been providing voice services for more than three years in its cable service territory.<sup>6</sup>

10. According to the Staff Report, Sprint currently provides access to the Public Switched Telephone Network ("PSTN") and telephone numbers.<sup>7</sup> The Staff Report states Mediacom's contract with Sprint to perform these duties will soon expire and MCC will take over Sprint's duties.<sup>8</sup>

11. Mediacom currently provides service to 20,000 residential and business customers in Arizona in the communities of Apache Junction, Ajo, and Nogales.<sup>9</sup>

12. Under its proposed services, MCC will be responsible for the Competitive Local Exchange Carrier ("CLEC") regulatory affairs and provide VOIP services in Arizona.<sup>10</sup> MCC intends to provide its proposed services to residential and business customers and high capacity

<sup>3</sup> Tr. at 10.

<sup>4</sup> Id.

<sup>5</sup> Staff Report at 1.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. Sprint was granted CC&Ns to provide IntraLATA toll services in Commission Decision No. 59584 (March 26, 1996) and local exchange services in Commission Decision No. 60236 (June 12, 1997).

<sup>9</sup> Tr. at 11.

<sup>10</sup> Tr. at 11.

1 private line services to large business customers, government entities and telecommunications  
2 carriers in Arizona.<sup>11</sup>

3 13. MCC does not plan to have any direct employees in Arizona; however Mediacom has  
4 approximately 36 employees located in the Ajo, Apache Junction, and Nogales communities who  
5 can provide services necessary to ensure the provision of VOIP services.<sup>12</sup> Potential MCC customers  
6 will also have access to centralized call centers seven days a week/ 24 hours a day to deal with  
7 customer inquiries regarding billing, service, or complaints.<sup>13</sup>

8 14. MCC's application states that its top five executives have more than 40 years combined  
9 telecommunications experience.<sup>14</sup>

10 15. Based on the above information, Staff concluded that MCC has the technical experience  
11 to provide its proposed services in Arizona.

#### 12 **Financial Capability**

13 16. MCC provided consolidated balance sheets for Mediacom and its subsidiaries for the  
14 period of December 31, 2007 to December 31, 2008.<sup>15</sup> The consolidated financial statements  
15 showed total assets of approximately \$3.7 billion; negative equity of \$346,644,000; and a net loss of  
16 \$77,494,000 for the period ending December 31, 2008.<sup>16</sup>

17 17. MCC's proposed tariffs state that it may collect advance payments from large business  
18 customers in cases where special construction is required to provide service.<sup>17</sup> MCC's proposed  
19 tariff also states that MCC may require capital contributions from medium and large business  
20 customers.<sup>18</sup> MCC's witness explained that the construction of special equipment referred to in the  
21 proposed tariff could occur if a customer wants a fiber optic connection or on site equipment is  
22 needed for private line services.<sup>19</sup>

24 <sup>11</sup> Staff Report at 2.

25 <sup>12</sup> Applicant's response to Staff's First Set of Data Requests STF 1.5.

26 <sup>13</sup> Applicant's response to Staff's First Set of Data Requests STF 1.7.

27 <sup>14</sup> Application at Attachment E.

28 <sup>15</sup> Application at Attachment D.

<sup>16</sup> Id.

<sup>17</sup> Application at Attachment B.

<sup>18</sup> Id.

<sup>19</sup> Tr. at 18.

1 18. MCC's proposed tariffs state that it may collect one time \$100 deposits from residential  
2 customers who are unable to prove credit worthiness.

3 19. Staff recommends that MCC procure a performance bond or ISDLC in the amount of  
4 \$225,000 to protect customer deposits.

5 **Rates and Charges**

6 20. Staff believes MCC will have to compete with various incumbent local exchange  
7 carriers ("ILEC"), competitive local exchange carriers ("CLEC"), and interexchange carriers  
8 ("IXC") currently providing telecommunications services in order to obtain customers in Arizona.

9 21. Given the competitive environment in which MCC will be providing service, Staff  
10 believes MCC will not be able to exert any market power and the competitive process will result in  
11 rates that are just and reasonable.<sup>20</sup>

12 22. MCC's proposed rates are for competitive services. Although fair value rate base is  
13 taken into account as part of the approval process for competitive services, Staff believes that  
14 MCC's fair value rate base is too small to be useful in a fair value analysis.<sup>21</sup> Further, Staff believes  
15 that because MCC proposes to provide high capacity private line services to sophisticated  
16 government and large business customers and telecommunications carriers that typically negotiate  
17 contracts through the competitive process, MCC's rates (even those obtained on an individual case  
18 basis) will be reasonable.<sup>22</sup> Staff states that for those business customers not needing individualized  
19 contracts, MCC's proposed tariffs offer rates that will meet business customers' needs.<sup>23</sup>

20 **Local Exchange Carrier Specific Issues**

21 23. Staff recommends that pursuant to A.A.C. R14-2-1308 (A) and federal laws and rules,  
22 MCC should make number portability available to facilitate the ability of customers to switch  
23 between authorized local carries within a given wire center without changing their telephone number  
24 and without impairment to quality, functionality, reliability, or convenience of use.

25 24. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that  
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27 <sup>20</sup> Staff Report at 4.

28 <sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

interconnect into a public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). Staff recommends that MCC contribute to the AUSF as required by the A.A.C. and that MCC make the necessary monthly payments as required under A.A.C. R14-2-1204(B).

25. In Commission Decision No. 59421 (December 20, 1995) the Commission approved quality of service standards for Qwest which imposed penalties for unsatisfactory levels of service. In this matter, MCC does not have similar history of service quality problems, and therefore Staff recommends that the penalties outlined in the Qwest Decision not apply to MCC at this time.

26. In areas where MCC is the only local exchange service provider, Staff recommends that MCC be prohibited from barring access to alternative local exchange service providers who wish to serve the area.

27. MCC will provide all customers with 911 and E911 service where available, or will coordinate with ILECs, and emergency service providers to facilitate the service.

28. Pursuant to prior Commission Decisions, MCC may offer customers local signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each individual call at no additional cost.

#### **Complaint History**

29. According to MCC's application, it has not had an application for service denied or revoked in any state where MCC has applied for a certificate to provide service.<sup>24</sup>

30. MCC's application states that no officers, directors, and/or managers of MCC have been or are currently involved in any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency or law enforcement agency.<sup>25</sup> MCC's application also indicates that none of its officers, directors, or partners have been in or are currently involved in any civil or criminal investigations, or had judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts in the last ten (10) years.

31. Staff reviewed information provided by five State commissions in jurisdictions where MCC's affiliates currently are authorized to provide service.<sup>26</sup> Staff's review in five jurisdictions

<sup>24</sup> Application A-18.

<sup>25</sup> Application A-11.

<sup>26</sup> Staff Report at 6.



1 showed no complaints had been filed in California, Florida, Missouri or Wisconsin; eight complaints  
 2 had been filed in Georgia<sup>27</sup>; and two in Iowa. Staff reported that all complaints have been  
 3 resolved.<sup>28</sup>

4 32. The Commission's Consumer Services Division reported that one service related  
 5 complaint had been filed, but that the matter has been resolved and the complaint closed.

6 33. Staff reported that one formal complaint proceeding had been initiated against one of  
 7 MCC's affiliates with the Federal Communications Commission ("FCC") for slamming, but that the  
 8 complaint had been dismissed by the FCC.<sup>29</sup> Staff's witness testified that the complaint involved a  
 9 customer's allegation that it had been slammed by Mediacom, but that the FCC investigation found  
 10 that Mediacom was not involved and the complaint was dismissed by the FCC.<sup>30</sup>

### 11 Competitive Analysis

12 34. Staff recommends approval of MCC's proposed services as competitive. Staff states that  
 13 MCC will have to convince customers to purchase its services; has no ability to adversely affect the  
 14 CLEC or ILEC or IXC markets; and alternative providers exist in the markets MCC desires to serve.  
 15 Therefore, Staff believes MCC will have no market power in the markets it wishes to serve and that  
 16 MCC's proposed services should be classified as competitive.<sup>31</sup>

17 35. Staff's recommendations as set forth herein, are reasonable, except that MCC shall be  
 18 required to provide to the Commission's Business Office for safekeeping, the original of an ISDL  
 19 or performance bond in the amount of \$225,000, and file 13 copies with Docket Control, as a  
 20 compliance item in this docket, within 90 days of the effective date of this Decision or 10 days prior  
 21 to serving its first customer, whichever comes earlier.

### 22 CONCLUSIONS OF LAW

23 1. MCAC is a public service corporation within the meaning of Article XV of the  
 24 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

25  
 26 <sup>27</sup> Four of the eight complaints involved repairs for dropped calls, poor and intermittent service and a technician who  
 missed a customer appointment.

27 <sup>28</sup> Staff Report at 6.

28 <sup>29</sup> Id.

<sup>30</sup> Tr. at 25.

<sup>31</sup> Staff Report at 7.

2. The Commission has jurisdiction over the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for MCC to provide the telecommunications services set forth in its application.

6. MCC is a fit and proper entity to receive a CC&N authorizing it to provide resold and facilities-based long distance and resold and facilities-based local exchange telecommunications services within the State of Arizona.

7. The telecommunications services MCC intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for MCC to establish rates and charges that are not less than MCC's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations as modified herein are reasonable and should be adopted.

## ORDER

IT IS THEREFORE ORDERED that the application of MCC Telephony of the West, LLC, for a Certificate of Convenience and Necessity for authority to provide resold and facilities-based long distance, resold and facilities-based local exchange and private line telecommunications services within the State of Arizona is hereby approved, subject to the conditions in Findings of Fact Nos. 5, 6, and 7 and in accordance with the following Ordering paragraphs.

IT IS FURTHER ORDERED that MCC Telephony of the West, LLC, shall provide to the Commission's Business Office for safekeeping, the original of an irrevocable sight draft letter of credit or performance bond in the amount of \$225,000, and file 13 copies with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this Decision or 10 days prior to serving its first customer, whichever comes earlier. The performance bond or irrevocable sight

1 draft letter of credit shall remain in effect until further order of the Commission. The Commission  
2 may draw on the performance bond or irrevocable sight draft letter of credit on behalf of and for the  
3 sole benefit of MCC Telephony of the West, LLC customers, if the Commission finds, in its  
4 discretion, that MCC Telephony of the West, LLC is in default of its obligations arising from its  
5 Certificate of Convenience and Necessity. The Commission may use the performance bond or  
6 irrevocable sight draft letter of credit funds, as appropriate, to protect MCC Telephony of the West,  
7 LLC's customers and the public interest and take any and all actions the Commission deems  
8 necessary, in its discretion, including, but not limited to returning prepayments or deposits collected  
9 from MCC Telephony of the West, LLC customers.

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IT IS FURTHER ORDERED that if MCC Telephony of the West, LLC, fails to comply with Staff's conditions, as described in Findings of Fact No. 7, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



CHAIRMAN



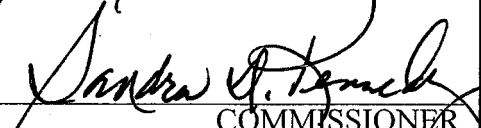
COMMISSIONER



COMMISSIONER

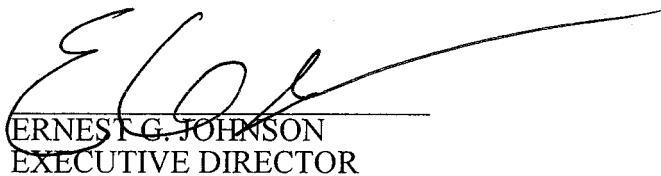


COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 23 day of November 2010.

  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

YBK:db

1 SERVICE LIST FOR: MCC TELEPHONY OF THE WEST, LLC

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